



POLISH FINANCIAL SUPERVISION AUTHORITY

Vice-Chairman

Wojciech Kwaśniak

DLB/DLB_WLI/700/54/1/2016

Warsaw, 19 May 2016

**Management Boards and Supervisory Boards
of domestic banks**

Dear Sir/Madam,

The Act of 5 August 2015 on Macroprudential Oversight of the Financial System and Crisis Management in the Financial System, implementing the solutions adopted in CRD IV, introduced, into the Banking Law Act (Article 22aa), the definition of the requirements that should be met by members of management boards and supervisory boards of banks. The requirements are as follows:

- 1) qualifications, i.e. knowledge, skills and experience relevant to the function performed and assigned duties, and the guarantee of due performance of those duties,
- 2) the performance of a limited number of functions of the management board or supervisory board member in other entities,
- 3) the ability to act with independence of mind,
- 4) suitability from the point of view of ensuring the necessary qualifications of the body collectively (collective qualifications).

As it follows from the provisions of the Banking Law Act, the bank is responsible for ensuring that these requirements are met. According to the Article 22(2) and Article 22a(1) of the Banking Law Act, the general meeting, when appointing or dismissing members of the bank's supervisory board, and the supervisory board, when appointing or dismissing members of the bank's management board, shall take into account the assessment of whether such persons being appointed or dismissed meet the requirements in question. At the same time it should be stressed that members of the management board and the supervisory board should satisfy the requirements referred to in Article 22aa of the Banking Law Act on a continuous basis, which means that the ensuring, by the bank, of the fulfilment of these requirements cannot be limited only to the assessment conducted in connection with the appointment or dismissal. The rules according to which the banks should perform their obligations in this respect, including, in particular, the criteria for the assessment whether the qualification requirements are met, are set out in the Guidelines of the European Banking Authority of 22 November 2012 on the assessment of the suitability of members of the management body and key function holders. The application of these guidelines was recommended to banks in the letter from the Vice-Chairman of the PFS of 17 April 2013 (ref. DLB/DLBWL1/703/ 2/1/2013). Banks should apply these guidelines until the PFS adopts Recommendation Z, whose draft was submitted by the PFS for public consultations in December 2015.

Referring to the basic principles of the assessment, by the bank, of meeting the qualification requirements by members of the management board and the supervisory board, as mentioned in the

Banking Law Act, first of all it should be stressed that the bank should make this assessment in the following situations:

- 1) if it intends to fill the post of a member of the management board or the supervisory board – with respect to persons selected for the post,
- 2) if the scope of responsibilities of a member of the management board or the supervisory board changes,
- 3) in any justified case, where there is any doubt as to whether a member of the management board or the supervisory board has suitable qualifications.

The reassessment of the same person may be limited to reviewing whether, in the face of the circumstance in question which is essential from the point of view of the assessment (e.g. a change in the scope of responsibilities), such person still meets the qualification requirements. The bank's bodies competent to decide on filling the specific function, i.e. the general meeting (the meeting of representatives) and the supervisory board respectively, are responsible for ensuring proper selection, and assessment of the fulfilment, of the requirements provided for for members of the supervisory board and the management board. Obviously, this does not mean that the entire assessment process must be carried out by those bodies on their own. According to the bank's capabilities and the organizational solutions adopted by the bank, both internal units of the bank (e.g. HR Department, Compliance Department, the Management Board Office, etc.) as well as external entities (consulting firms) may participate in the assessment process. It is essential that the bodies responsible for the assessment (deciding on the subject matter of the assessment) are provided with accurate, comprehensive and well-documented decision-making materials. To this end, situations and tools that could raise doubts as to the completeness or accuracy, including the impartiality, of the assessment should be avoided in the assessment process. In particular, the assessment should not rely solely on self-assessment (mutual assessment) and the declarations of members of the body, and the bank should endeavour to review, as objectively as possible, the information and assessments obtained. At the same time, a situation where the assessment is developed solely by the employees subordinate to those being assessed does not seem to be a solution that ensures prevention of a conflict of interest. The above-mentioned issues should be resolved and described in detail in the relevant internal regulations of the bank. It should also be noted that in accordance with the above-mentioned guidelines of the EBA and draft Recommendation Z, similar assessment rules should also apply to (future) key function holders in the bank.

According to Article 22(3) and Article 22a(2) of the Banking Law Act, immediately after the appointment of the supervisory board or the management board or after any change in the composition of these bodies, the bank shall advise the PFSA of such fact, and of the fulfilment by the persons concerned of the requirements of Article 22aa of the Banking Law Act. As it is clearly indicated by the aforementioned provision, the information on meeting the requirements should result from the assessment conducted by the competent body of the bank. For these reasons, this information cannot be limited only to a statement that the requirements have been met, or that the outcome of the assessment carried out is positive. This information should also present the circumstances and the criteria taken into account in the assessment process, the circumstances and criteria omitted in this process, as well as the justification for the outcome of the assessment in light of these circumstances and criteria. It is acceptable to limit the submitted information to a statement that the previously presented assessment of the person in question remains valid only in the case of information submitted to the PFSA in connection with the dismissal of a member of the management board or the supervisory board, if the dismissal is not the outcome of reassessment, or if the outcomes of the assessment conducted in connection with the dismissal do not deviate from the outcomes previously communicated. Bearing in mind that the assessment of meeting the requirements set out in Article 22aa of the Banking Law Act should be carried out prior to the person's appointment as a member of the management board or the supervisory board in the case of functions that must be filled with the

consent of the PFSA (i.e. the president of the bank's management board or the management board member responsible for a significant risk in the bank's operations), the assessment should be carried out before submitting the application for such consent to the PFSA, and the information about the assessment, as referred to above, should be enclosed with such application.

This letter is addressed to management boards and supervisory boards of all domestic banks, but the comments included herein should also be presented, at the earliest opportunity, to general meetings or meetings of representatives of banks. The banks associating cooperative banks are requested to communicate the text of this letter to associated cooperative banks.

Vice-Chairman of the Polish Financial Supervision Authority

Wojciech Kwaśniak